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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re L.G., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.G. et al.,

Defendants and Appellants.

E061173

(Super.Ct.No. J241753)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B.
Marshall, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and
Appellant L.G.

Valerie N. Lankford, under appointment by the Court of Appeal, for Defendant
and Appellant J.G.

Jean-Rene Basle, County Counsel, Danielle E. Wuchenich, Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court terminated the parental rights of defendants and appellants L.G. (Mother) and J.G. (Father) to their son, L.G. (Minor). (Welf. & Inst. Code, § 366.26, subd. (b).)¹ Mother contends the juvenile court erred by terminating her parental rights because the court should have applied the parent-child bond exception. (§ 366.26, subd. (c)(1)(B)(i).) Father asserts that if this court orders Mother's parental rights be reinstated, then Father's parental rights should also be reinstated. Mother and Father join in one another's arguments. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. BACKGROUND

Mother and Father (Parents) are married. Mother has three children: (1) Minor, who was 11 months old in 2011; (2) V.S., a daughter, who was nine years old in 2011; and (3) J.C., a son, who was 12 years old in 2011. Father is the presumed father of Minor. J.S. (Father-2) is the father of V.S. R.A. (Father-3) is the presumed father of J.C.

B. DETENTION

On October 20, 2011, Father was acting strangely, so Mother took him to the hospital. At the hospital, Father tested positive for methamphetamines. The next day, October 21, Parents had a physical fight. Father “pounded” Mother's head into the

¹ All subsequent statutory references will be to the Welfare and Institutions Code unless otherwise indicated.

floor and tried to suffocate her. J.C. witnessed the fight. Mother went to the hospital. Due to the fight, and while Mother was in the hospital, Father was placed on a 72-hour section 5150 hold.

On October 23, Mother was arrested for not making herself available to be questioned regarding the October 21 fight. Mother was incarcerated until October 25, when the charges against her were dismissed. During that time, Minor and J.C. stayed with their maternal grandparents, while V.S. stayed with Father-2. However, Father took Minor from the grandparents' home, driving away with Minor between his legs. Mother did not know where Father and Minor went and was unable to contact Father.

On or about November 10, Father returned Minor to Mother, and Mother served Father with a restraining order. J.C. told a social worker from the San Bernardino County Children and Family Services (the Department) that if he saw Father, then he (J.C.) would be very upset and would want to hurt Father. Mother agreed to a safety plan, which required not allowing Father into the home.

On November 15, the Department was notified that J.C. was placed on a section 5150 hold. The hold was due to J.C. becoming upset "because he was around [Father]." Mother took J.C. to the hospital. Hospital staff found J.C. "was in a psychotic state and that it could have been caused by [the] trauma of being in contact with [Father]." The Department decided to detain Minor and J.C. due to the risk of domestic violence and Mother's failure to protect the children. The Department determined Father-2 was an appropriate caregiver for V.S., so she was not detained.

The Department filed a petition alleging (1) Parents have a history of domestic violence; (2) Mother has a mental health history, including depression, for which she was hospitalized in 2001; (3) Mother has a criminal history, including a charge of domestic violence in 2011; (4) Mother failed to protect Minor from being “abducted” by Father, and failed to protect Minor from Father; (5) Father has a history of domestic violence with Mother; (6) Father has a mental health history including schizophrenia, has failed to take his medication, and was placed on a section 5150 hold in October 2011; (7) Father has a substance abuse history, including methamphetamines and marijuana, for which he tested positive in October 2011; (8) Father has a criminal history, including an arrest for domestic violence in March 2009 and driving under the influence in April 2007; and (9) Father “abducted” Minor on October 24 and did not return him until November 10. (§ 300, subd. (b).)

The juvenile court found a prima facie case had been established for detaining Minor and J.C. The court ordered Minor and J.C. removed from Parents’ physical custody.

C. JURISDICTION AND DISPOSITION

While at the hospital in November 2011, J.C. said his Mother struck his arm with a wire, which created three horizontal marks on his arm. J.C. also said Parents drink alcohol, Father poured coffee in J.C.’s left eye a year prior, and Father threw a camera at J.C. As a result of witnessing the domestic violence between Parents, J.C. believed Father wanted to kill him. J.C. was diagnosed with intermittent explosive disorder, attention deficit hyperactivity disorder, post traumatic stress disorder, and conduct

disorder, which were likely due to the physical abuse and domestic violence in his home. After leaving the hospital, J.C. was placed in a group home.

A Department social worker asked Mother why Mother had brought J.C. around Father. Mother explained she had decided to dismiss the restraining order and “work on [her] marriage.” Mother also explained that “she was not going to allow [J.C.] to determine who she was going to be in a relationship with.” Mother believed Father was no longer a danger to her or her children. Mother made excuses for Father, blaming his “mental health diagnosis,” and his failure to take his medication. Mother said she feared being harmed by J.C. more than she feared Father. Mother suffered from bipolar disorder. In addition to schizophrenia, Father also suffered from bipolar disorder and attention deficit hyperactivity disorder.

Mother was granted two hour per week visits with J.C. Prior to the December 4 visit, J.C. told the group home staff he was excited to see Mother, and that Father was not permitted at the visit. When Mother arrived for the visit, she was accompanied by Father. The group home staff told Mother the visit could not proceed if Father were present. Mother refused to participate in the visit without Father. Mother said to J.C., “[D]eal with it because I’m not going to leave him because he’s my husband.” J.C. said he did not want Father there. Mother responded, “I’m thirty-one . . . and you’re twelve[,] you’re not going to make me choose.” Group home staff eventually intervened, and the visit was terminated. J.C. was upset, cried, and “flipped [Mother] off.” J.C. was moved to Father-3’s home.

Minor was placed in a foster home, but in December he was moved to Father-2's home (V.S.'s father). In November, Parents visited Minor twice; Parents were "appropriate" during the visits.

On or about January 9, Father telephoned a substance abuse counselor. Father was agitated, tearful, emotional, and threatened to harm himself. After consulting another counselor, the substance abuse counselor called Father back; Mother answered. Mother said Father would not let her leave the house because Father was intoxicated. The counselor asked if Mother was abusing drugs. Mother cried but did not answer. The counselor contacted law enforcement; Father was placed on a section 5150 hold. On January 9, a Department social worker asked Mother to take a drug test. Mother did not appear for the drug test.

A social worker contacted Father-2 to inform him Minor's visits would need to take place at the Department's offices, due to safety concerns. Father-2 said Mother had been "appropriate during the visits," but also appeared "'spacey' and 'anxious' during the visits."

On January 12, Mother visited Minor. Mother's eyes were red and she appeared tired. Mother said she had been sick and had taken medication. Mother explained she did not take the drug test on January 9 because she was on probation and did not want to risk being returned to jail. Mother was given another referral to take a drug test. Mother said she did not need to take a drug test.

On January 18, Mother requested a Department social worker refer her to an inpatient drug treatment program. Mother admitted abusing methamphetamines for "a

while,”” and said she consumed it two to three times per week. Mother said she last abused methamphetamines on January 16, but then admitted she had abused the drug that day (January 18). As a result, Mother could not visit J.C. that day because she was under the influence. J.C. ran away from Father-3’s house on January 18, after learning the visit with Mother had been canceled. After law enforcement was contacted, J.C. was located and returned to Father-3’s home.

Additionally, Mother missed a visit with Minor on January 17. Mother did not call to say she would be missing the visit. The next day, Mother explained that she missed the visit due to a domestic dispute between herself and Father. As a result of the dispute, law enforcement was contacted and Father was placed on a section 5150 hold and was later admitted into a psychiatric hospital. Father said that during the dispute, Mother ““went crazy on [him]’ and someone called the police.”

Mother also missed a visit with Minor on January 19. Mother did not telephone to say she would miss the visit. A Department social worker had telephoned Mother on the 19th, before the scheduled visit, to remind Mother of the visit and let her know the Department needed Mother to sign a form before the substance abuse referral could be made. Mother received the referral the following day; Mother entered an inpatient drug abuse treatment program.

On January 24, the Department filed an amended petition adding a tenth allegation concerning Mother’s recent substance abuse. In regard to the allegations involving Mother and Minor, the juvenile court found all the allegations to be true. The court also found true the allegations related to Father and the allegations concerning

J.C., although some were modified in mediation. In regard to disposition, the court found removal was necessary. The court found it was appropriate to place J.C. with Father-3. The court noted Minor was placed with a non-related extended family member, i.e., Father-2.

D. SIX-MONTH REVIEW

On February 17, Father-3 told the Department he could no longer care for J.C. due to J.C.'s delinquent behavior. J.C. was placed in a group home. The family court granted Father-2 sole custody of V.S., with unsupervised visits for Mother for eight hours on Saturdays and Sundays.

On March 18, Mother completed her inpatient substance abuse treatment program. Mother participated in an outpatient program, but tested positive for methamphetamines on May 21. A Department social worker spoke to Mother on July 10. Mother admitted she last abused methamphetamines on July 8. Mother completed her parenting class in June and participated in a domestic violence program.

Parents resided at maternal grandmother's home for "a few months" but had to move out due to the arrangement "not being in the best interest of any one in the home." Parents then resided with another of Mother's relatives for approximately one month. Parents were asked to leave that home, and were temporarily (for two weeks) residing with a different relative. Parents had no source of income.

Parents consistently visited Minor. Parents were "appropriate" and "interactive" during the visits. J.C. played roughly with Minor during the visits, and Parents

redirected J.C., although he would continue to play roughly. Minor was doing well in Father-2's home.

At the review hearing, the juvenile court ordered that Minor and J.C. continue in their respective placements. The court found Parents had made moderate progress in alleviating the problems that caused the initial removal of the children.

E. 12-MONTH REVIEW

In August 2012, Parents were involved in a "domestic violence incident." Father was arrested as a result of the altercation and Mother was hospitalized. After the domestic violence, Mother moved to her parents' (Grandparents) home. Father moved to his sister's home in Fontana, and then moved to Mexico.

Mother visited with Minor and J.C. on Saturdays from 11:00 a.m. to 4:00 p.m. at Grandparents' home. The visits were supervised by Grandparents. Mother was "appropriate" and "interactive" during the visits. Minor remained in Father-2's home with V.S. Minor called Father-2 "'Tio' which means uncle."

The juvenile court found placing Minor and J.C. in Mother's custody would create a risk of detriment to the children. However, the court also found there was a probability Minor and J.C. would be returned to Mother's custody in the future, and did not terminate parental rights. The court found Mother had made moderate progress with her case plan. The court authorized the Department to liberalize Mother's visits with Minor, including unsupervised visits.

F. 18-MONTH REVIEW

Mother's visits with Minor were moved to Father-2's home because Minor's grandmother had applied for guardianship. In February 2013, Mother's visits with Minor became inconsistent and her behavior during the visits "was often unusual such as going into [Father-2's] room to take a nap without asking during the visit." Mother appeared "dazed" during another visit. Mother visited Minor and J.C. "every couple of weeks." During Mother's visits, when Minor needed help or comfort, Minor would seek out Father-2. Minor appeared "very bonded" to Father-2.

In February, Father-2's telephone caller identification reflected Mother had called Father-2 from a motel, where she had previously stayed. The Department tried to contact Mother in order to find out where she was living, but was unsuccessful until April. On April 30, a Department social worker spoke to Mother. Mother said Father was diagnosed with a brain tumor and was receiving treatment in Mexico. Mother ended the telephone call before giving her address. Father-2 said that, during a visit, Mother asked to take Minor down the street unsupervised. Father-2 suspected Mother wanted to take Minor to visit Father, i.e., Father was in the United States, not Mexico. According to Father-2, in May, Mother began bringing Father to the visits with Minor and became more consistent with her visits.

Mother completed her services and was participating in individual counseling. Mother failed to take a drug test on April 23. The review hearing scheduled for May 16 was continued to July 11. After the May 16 hearing, a Department social worker went to Mother's residence, which was a studio apartment. The apartment was well

maintained. Mother said she was employed. Mother had a mark on her neck, which she said was caused by a curling iron. Mother denied Father was attending visits, and denied having contact with him.

The juvenile court found Mother failed to regularly participate in the court ordered treatment plan and made minimal progress in the plan. The court terminated Parents' reunification services. The court authorized supervised visitation between Mother and Minor one time per week for one hour.

G. TERMINATION

Between July 11 and November 5, Mother visited Minor one time. The visit took place on August 6. Mother interacted appropriately with Minor during the visit. Minor was smiling throughout the visit and appeared happy. On August 9, Mother informed a Department social worker that she was leaving for Mexico because Father was scheduled to have brain surgery for his tumor. On October 28, Mother contacted the social worker and said she had returned to the United States. Mother did not have an address or telephone number where she could be reached by the Department. Father returned to the United States in January 2014.

The termination hearing took place in March 2014. Mother testified at the hearing. Mother said since returning from Mexico she visited Minor once per week for one hour, although she missed one visit. Mother also spoke with Minor on the telephone almost every day for five to eight minutes, upon returning from Mexico. Mother explained that she went to Mexico for approximately three months because

Father was having brain surgery. Mother said she telephoned Minor while she was in Mexico; she tried to call Minor “once or twice a week.”

Mother said that during her visits with Minor, when Minor sees her, he lets go of Father-2, and runs to her saying ““Mommy, Mommy.”” According to Mother, Minor does not call anyone but her “Mom or Mommy.” However, Minor sometimes calls Father-2 “Daddy or Dad,” in addition to “Tio.” At the end of almost every visit, Minor cries and tells Mother he wants to go home with her. Mother never had an unsupervised visit with Minor.

A Department social worker also testified at the hearing. Employees at the visitation center, where Mother’s visits took place, informed the social worker that Minor was upset at the end of Mother’s first three visits after she returned from Mexico, but was not upset at the following visits. The first three visits took place in December 2013 and possibly in early January 2014. At the end of the first three visits, Minor would cry and reach for Mother. The social worker was unaware of Mother having daily telephone contact with Minor upon Mother’s return from Mexico.

The Department argued Mother did not meet her burden in proving the parent-child bond exception should apply because Mother failed to prove that loss of the parent-child relationship would be detrimental to Minor. The Department noted Mother left the country, “essentially abandon[ing] visitation.” The Department also questioned Mother’s testimony regarding daily telephone calls to Minor, since that information had not been shared with the Department.

Mother's attorney asked the court to apply the parent-child bond exception. Mother's attorney asserted Minor had "negative reactions when [Mother's] visits are over," which is evidence reflecting Minor would benefit from continuing the relationship with Mother. Mother's attorney argued that Minor knows Mother as his mother, and that Mother regularly visited Minor upon her return from Mexico.

Minor's attorney supported the Department's argument. Minor's counsel noted that prior to leaving for Mexico, Mother missed visits with Minor and took naps during the visits she did attend. Minor's counsel asserted that Minor was "perfectly fine" and "not distressed" when Mother was gone in Mexico and not visiting Minor. Minor's counsel argued that Minor did not need special treatment because Mother had stopped visiting for months. Minor's counsel asserted Mother failed to understand the problems that started the case, as evinced by Mother continuing her relationship with Father and lying about her relationship with Father "throughout the case." Minor's counsel asserted Minor had been removed from Mother's care for approximately 27 months, but Mother only had one hour per week visits with the child, which showed a lack of progress on Mother's part. Minor's counsel argued that Mother does not occupy a parental role in Minor's life as evinced by the one hour per week they spend together, and Minor not being upset when Mother stopped visiting him while she was in Mexico.

The juvenile court explained that the parent-child bond exception requires regular visitation and benefit to the child. The court found that, except for the time Mother was in Mexico, Mother regularly visited Minor, so the court moved to the next step of the analysis. As to the relationship, the court found Mother had "loving contact"

with Minor, but she did not occupy a parental role. The court found Minor would not suffer “great harm, or even harm for that matter” if Mother’s parental rights were terminated. The court terminated Parents’ parental rights to Minor.²

DISCUSSION

A. MOTHER’S APPEAL

Mother contends the juvenile court erred by not applying the parent-child bond exception. (§ 366.26, subd. (c)(1)(B)(i).)

Mother notes there is a split of authority as to which standard of review applies when reviewing a juvenile court’s decision to not apply the parent-child bond exception. Some courts apply the substantial evidence standard; others use the abuse of discretion standard; while others employ a hybrid of the two standards. (See *In re Christopher L.* (2006) 143 Cal.App.4th 1326, 1333-1334 [Fourth Dist., Div. One applying the substantial evidence standard]; see also *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 449 (*Aaliyah R.*) [Second Dist., Div. Eight applying the abuse of discretion standard]; see also *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314-1315 [Sixth Dist. applying a hybrid of the substantial evidence and abuse of discretion standards].)

In Mother’s appellant’s opening brief, she applied the substantial evidence standard of review. The Department applied the abuse of discretion standard in its respondent’s brief. Mother switched to the abuse of discretion standard in her appellant’s reply brief, but it appears she may have made the change only for the sake of

² J.C.’s permanent plan was guardianship or long-term foster care.

responding to the Department’s argument. Rather than delve into the standard of review issue, we will apply the same substantial evidence standard originally selected by Mother since she is the appellant and bears the burden on appeal. (See *In re Megan S.* (2002) 104 Cal.App.4th 247, 251 [appellant bears the burden on appeal].)

If a juvenile court finds a dependent child is adoptable, then it will terminate parental rights unless one of the statutorily enumerated exceptions is applicable. (§ 366.26, subd. (c)(1).) One of the enumerated exceptions provides that parental rights shall not be terminated if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

The juvenile court found Mother’s visits were consistent. Accordingly, we focus on the “benefit” prong of the analysis. “The benefit to the child from continuing such a relationship must . . . be such that the relationship “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” [Citation.]” (*Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 449.) In other words, for the exception to apply the bond between the parent and child must be a parent-child bond, rather than the type of bond a child might have with a friendly visitor or non-parent relative, such as an aunt. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 468.)

“The exception must be examined on a case-by-case basis, taking into account the many variables which affect a parent/child bond. The age of the child, the portion of the child’s life spent in the parent’s custody, the “positive” or “negative” effect of

interaction between parent and child, and the child's particular needs are some of the variables which logically affect a parent/child bond.' [Citation.]" (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1166.)

Minor was born in November 2010. Minor was removed from Mother's custody in November 2011. However, Mother was jailed in October 2011, and Father "abducted" Minor for approximately three weeks in October and November 2011. Mother's parental rights were terminated in March 2014. Accordingly, Minor spent approximately one year of his life in Mother's care, and spent over two years out of Mother's custody. Therefore, Minor spent the majority of his life in foster care, as opposed to Mother's care.

In regard to the parent-child interaction, Minor was happy to see Mother. He smiled when they were together. However, Minor did not have face-to-face contact with Mother for approximately three months, and appeared unfazed by the lack of contact. He did not act out or display any negative behaviors by the lack of face-to-face contact with Mother. During the reporting period when Mother was gone in Mexico, Minor "readily smile[d] and easily engage[d] with others." As a result, the juvenile court could reasonably determine that while Minor and Mother had "happy" contact, they did not have a parent-child bond. Rather, Mother was more of a friendly visitor.

Additionally, the evidence reflects Mother's face-to-face visits with Minor were always supervised. The juvenile court could find additional support for the parental-role finding in this evidence. Since Mother's visits were always supervised, there is an inference that Mother lacked appropriate parenting skills. For example, Mother would

nap during her visits with Minor. Since Mother lacked parenting skills, that further supports the conclusion that her time spent with Minor was more in the nature of friendly visits than parent-child interaction.

In sum, based upon Minor spending the majority of his life in foster care (as opposed to Mother's custody) and Minor's interactions with Mother being more in the nature of a friendly visitor than parent-child, the juvenile court could reasonably conclude Minor would gain the greater benefit from being adopted into a permanent home. Accordingly, we conclude the juvenile court did not err.

Mother contends the juvenile court erred because Mother cared for Minor during the first year of his life, her visits with Minor were happy, Mother acted appropriately during the visits, Mother spoke to Minor via telephone nearly every day, Minor did not call anyone else "Mommy," Minor would run to Mother at the start of the visits, and Minor was upset at the end of the visits. Mother aptly points to evidence contradicting the juvenile court's decision. However, contradictory evidence does not equate with a lack of substantial evidence. Under the substantial evidence standard we must affirm the judgment if there is evidence supporting the court's ruling, even if there is evidence that would support a contrary finding. (*In re A.M.* (2010) 187 Cal.App.4th 1380, 1387-1388.) As a result, we find Mother's argument to be unpersuasive because there is substantial evidence supporting the ruling, as discussed *ante*.

Mother contends the juvenile court should have applied the exception and ordered a plan of legal guardianship because Minor resided with Mother's daughter, V.S., in Father-2's home, and Mother still had parental rights over V.S. Mother

contends Minor will be confused by Mother “remaining [V.S.’s] ‘mommy’ but not [Minor’s] ‘mommy.’”

“At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans. [Citations.]” (*In re S.B.* (2008) 164 Cal.App.4th 289, 296-297; see also § 366.26, subd. (c)(1).) Guardianship and long-term foster care are the preferable plans in situations where an exception to terminating parental rights is applicable, e.g., the parent-child bond exception. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1420.)

Mother’s argument is problematic because it asserts the court should have applied the parent-child bond exception based upon Minor being adopted by a specific person. Mother is asserting the court should have weighed the benefit of continuing the relationship with Mother against the harm Minor might experience growing up in Father-2’s home with V.S., who is still Mother’s legal child.

The problem lies in the way Mother has presented the weighing process. When a child is generally adoptable, the court should not conduct the weighing process with a specific adoptive family in mind. Rather, the court should only determine whether the benefit the child would receive from continuing the parental relationship promotes the child’s wellbeing to such a degree that it outweighs the “““well-being the child would gain in a permanent home with new, adoptive parents.”” [Citation.]” (*Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 449.) Notably, the weighing process does not take into consideration the benefit the child would receive in the specific prospective adoptive

family's home—it is a general benefit of adoption. (See *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 956.)

The juvenile court found Minor was generally adoptable. As a result, the court correctly did not consider Minor's life in Father-2's home when deciding whether to apply the parent-child bond exception. The juvenile court correctly considered only whether the benefit of continuing the relationship with Mother outweighed the wellbeing Minor would receive from being adopted by any family—not necessarily Father-2. In sum, the juvenile court did not err.

B. FATHER'S APPEAL

Father contends that if Mother's parental rights are reinstated, then his parental rights must also be reinstated. We are affirming the juvenile court's order in relation to Mother. Therefore, we will also affirm the juvenile court's order as to Father, since Father's appeal is dependent upon Mother's appeal being successful.

DISPOSITION

The judgment is affirmed as to Mother and Father.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

KING
J.